RICHARD H. AUSTIN • SECRETARY OF STATE
STATE TREASURY BUILDING
LANSING
MICHIGAN 489

January 10, 1979

Honorable Raymond W. Hood
Michigan House of Representatives
State Capitol
Lansing, Michigan 48909

Dear Representative Hood:

This is in response to your request concerning the applicability of the Campaign Finance Act, P.A. 388 of 1976 ("the Act"), as amended, to a petty cash fund.

You state you desire to establish a petty cash fund consisting entirely of officeholder expense fund monies. You ask whether the preceding is permissible under the Act.

Section 49(1) of the Act (MCLA §169.249) states "an elected public official may establish an officeholder expense fund. The fund may be used for expenses incidental to the person's office. The fund may not be used to make contributions and expenditures to further the nomination or election of that public official."

A petty cash fund may be established with monies from an officholder expense fund. In that instance, however, the petty cash fund must be entirely separate and distinct from any petty cash fund of the candidate's committee. As such, it may be used only for expenses incidental to the person's office.

Just as officholder expense fund reporting and procedural requirements, unless otherwise indicated in the Act, are parallel to those for candidate and other committees, reporting and procedural requirements applicable to petty cash funds established with candidate committee monies are applicable also to petty cash funds credited with officeholder fund monies. Thus, for example, a single expenditure from a petty cash fund shall not exceed $50.00 regardless of whether the fund is established with candidate committee or officeholder fund monies.

This response may be considered informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 10, 1979

Mr. Noel D. Culbert
Attorney & Counselor-at-Law
30499 Plymouth Road
Livonia, Michigan 48150

Dear Mr. Culbert:

This is in response to your inquiry concerning the Campaign Finance Act, P.A. 388 of 1976 ("the Act"), as amended.

You indicated you were a candidate for Supervisor in Canton Township. You ordered ice-scrapers which were distributed to voters. The ice-scrapers were plastic, 6" long and 3" wide, narrowing to 1-1/2" at the handle.

You request that the ice-scrapers be exempted from the identification requirements of the Act.

Section 47 of the Act (MCLA §169.247) enables the Department to exempt from the Act's identification requirements any printed matter which is of a size as to make the identification requirements unreasonable. Rule 169.36 of the General Rules, promulgated by the Secretary of State pursuant to authority conferred by Section 15 of the Act (MCLA §169.215) and having the effect of law, provides a similar exemption.

The Department determines that the ice-scrapers which are the subject of your inquiry are exempt from the identification requirements as stated in the legal provisions cited above.

Sincerely,

Richard H. Austin

Richard H. Austin
Secretary of State

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

January 10, 1979

Honorable Jack Faxon
Michigan State Senate
State Capitol
Lansing, Michigan 48909

Dear Senator Faxon:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act, P.A. 388 of 1976 ("the Act"), as amended, to a waiver of a service charge fee for overdrafts on an account of a candidate committee.

You state that the National Bank of Detroit, "as a usual part of its business, extends to its depositors a waiver of service charge fees."

Your question is whether the above waiver would constitute an illegal corporate contribution to your candidate committee?

Section 4 (MCLA §169.204) states in pertinent part that "contribution" means anything of ascertainable monetary value given to a committee for the purpose of influencing an election; "contribution" includes "the granting of discounts or rebates not available to the general public."

The implication of the preceding definition is that discounts or rebates available to the general public are not contributions. Accordingly, if the waiver of the fee in question is available to the general public, the waiver is not a contribution. However, it is not clear from your letter whether this is the case in your situation. You state "as a usual part of its business the bank waives the service fee." It is not clear that the waiver is available for all depositors or only for those the bank arbitrarily chooses.

In summary, if the waiver is merely a favor to your committee then it is a contribution and is prohibited by the Act as a corporate contribution to a candidate committee. However, if every depositor may receive this benefit then it is not a contribution.

Since your request does not contain a specific factual situation as required by Rule 169.6 of the Administrative Rules promulgated by the Department of State to implement the Act, this response does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

May 23, 1979

Ms. Ann Brown, Finance Secretary
Republican Committee of Oakland County
245 S. Woodward Avenue
Birmingham, Michigan 48011

Dear Ms. Brown:

This is in response to your inquiry concerning the requirements of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, governing the filing of campaign statements of a political party committee.

You indicate the financial records of your political party committee are maintained on a calendar year basis. You inquire whether you can submit a campaign statement in January of each year, and a second report in June covering the period from January.

Section 33 of the Act (MCLA §169.233) requires a committee supporting or opposing a candidate in an election to submit preelection and postelection campaign statements for that election, absent any applicable exemption. Section 35 (MCLA §169.235) provides for submission by a committee of a campaign statement not later than June 30 of each year, again absent any applicable exemption. This latter provision states "The period covered by the campaign statement filed pursuant to this subsection shall begin from the day after the closing date of the previous campaign statement." The statement due on June 30 may, therefore, be an annual statement depending on whether or not an election has taken place in the twelve months preceding the filing of the statement.

In view of the schedule for filing campaign statements established in the Act, your request would create a statement not contemplated by the Act and might cause confusion in relation to required filings. Therefore, you should file statements on behalf of your committee consistent with the schedule set forth in the Act.

It is the understanding of this office that since your inquiry was submitted, you have attended several seminars of the Department's Campaign Finance Reporting Section. Undoubtedly, the above information may have been provided to you at those sessions.

This response may be considered as informational only and not as constituting a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/smh

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING

MICHIGAN 48918

MAY 31 1979 2 PM

May 29, 1979

Mr. Clifford L. Johnson
Chrysler Non-Partisan Political
Support Committee
P. O. Box 1919
Detroit, Michigan 48288

Dear Mr. Johnson:

This is in response to your inquiries concerning the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended.

You ask whether a separate segregated fund may act as a third-party conduit for a contribution to a candidate committee.

More specifically, you inquire whether an employee of a corporation may "ear-mark" his or her contribution to a separate segregated fund so that the contribution will be transmitted by the separate segregated fund to the designated candidate consistent with the contributor's intent. You also ask whether it makes a difference as to whom the contribution check is made payable. Finally, you inquire as to the impact of such a transaction upon contribution limits set forth in the Act.

Section 44(1) of the Act (MCLA §169.244(1)) provides "a contribution shall not be made by a person to another person with the agreement or arrangement that the person receiving the contribution will then transfer that contribution to a particular candidate committee." Section 11(1) (MCLA §169.211(1)) defines "person" to include a committee. In order to function pursuant to this Act, a separate segregated fund must register and report as a committee.

The Attorney General in OAG No. 5279, dated March 22, 1978, stated, "It must be noted that the administration of such a fund (a separate segregated fund) and the authorization of expenditures from the fund must be by the board of directors of the corporation or by a committee authorized by the board of directors of the corporation."

The definition of "expenditures" in Section 6(2) of the Act (MCLA §169.206(2)) includes "contributions".

Accordingly, a separate segregated fund may not receive a contribution designated by the contributor to be given to a specific candidate committee. To allow an "ear-marked" contribution of this type would violate the prohibition of Section 44(1). It would place the "authorization of expenditures" function in the hands of the contributing corporate employee, contrary to the ruling of the Attorney General.

The answer to your first principal question makes answers to your ancillary queries unnecessary.

This response may be considered as informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

MAY 31 1979 2 PM

May 29, 1979

Mr. Michael Batchik, Treasurer
Peres, Carr, Jacques, Batchik &
Schmidt
2715 Pontiac Lake Road
Pontiac, Michigan 48054

Dear Mr. Batchik:

This is in response to your inquiries concerning the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended.

You ask two questions:

(1) May a food service corporation donate a number of dinners to a candidate committee's fund raising event?

(2) May an individual volunteer working on a candidate's campaign receive compensation from a corporate employer for the time during which the volunteer work is rendered?

Section 54(1) of the Act (MCLA §169.254(1)) provides a corporation may not make a contribution or expenditure or provide volunteer personal services. In view of this prohibition, the answer to both your questions must be in the negative.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

May 29, 1979

Honorable Mitch Irwin
Michigan State Senate
State Capitol Building
Lansing, Michigan 48902

Dear Senator Irwin:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to expense payments made by your campaign committee for certain personal living expenses incurred by you during the course of the 1978 primary and general election campaigns.

Your question is whether personal living expenses of a candidate in the course of a campaign may be paid by the candidate's committee.

Specifically, during your campaign for the State Senate, several expenses were paid by your candidate committee. These payments were made after June 9, 1978, the date you went on a non-paid leave status with your employer. The payments enumerated below were made ostensibly for the reasons indicated while you were on leave without pay:

Payment	Purpose
Mortgage payments	Shelter and part-time campaign office for candidate.
Lot rent for trailer	Shelter and part-time campaign office for candidate.
Car payments	Transportation in lieu of a leased vehicle for candidate.
Babysitting expense	Expenditure allowing candidate and wife to campaign jointly.
Candidate car insurance	Transportation in lieu of a leased vehicle for candidate.
Dental expense	Necessary dental work with an emphasis for television exposure.
Clear eyeglass lenses	Replacement of candidate's photogray lenses with clear lenses for television image.

As an explanation of the above expenses you add:

> "While these expenditures are for the personal maintenance of the candidate, they also were 'Payments...in assistance of... the nomination or election of a candidate.' The committee made the expenditures for the single purpose of influencing the primary and general election.
>
> "The purpose of the expenditure must be viewed from the perspective of the committee. By making these payments, the committee made it possible for the candidate to devote his full-time efforts to the campaign for the Senate. The judgment that was made insured that the candidate would not be devoting his personal energies to anything but winning the election. This full-time effort was thought to be necessary because of the geographical size of the District, the stiff competition for the office, and the fact that the candidate was not well known throughout the District when the campaign began.
>
> "It should be noted that the Federal Election Commission has issued numerous Advisory Opinions concluding that a committee's funds may be used for payment of personal subsistence payments for candidates. Such expenditures are also permissible in other States."

You mention the Federal Election Commission has issued numerous advisory opinions concerning the use of campaign funds. However, the Federal legislation and regulations do not contain a provision similar to that in Michigan's statute which requires particular disposition of residual funds which may affect permissible use of funds as explained below. This fact serves to illustrate the point that candidates and committees should exercise care in using exclusively the Federal Campaign Act and supplementary materials as guidance for committee conduct in this state. Each provision under the Federal legislation must be viewed in total context and not in isolation. The Federal statute is similar but not identical to the Act.

However, a review of permissible uses in the Federal law and in the statutes of other states will assist in interpretation of the pertinent provisions of the Act. Succinctly stated, in the Federal system a candidate may make expenditures from his or her campaign fund for any lawful purpose. It does not make any difference whether the disbursement is political or non-political so long as every disbursement is reported.

The relevant advisory opinions and informational letters, and telephone conversations with the Federal Election Commission, also reveal that excess campaign funds are treated the same as campaign funds. Consequently, the question of the use of excess campaign funds is pertinent in this case.

Under the Federal law, the time of disbursement before, during, or after an election, or after termination, makes no difference as to possible use of the funds.

Under Section 45(2) of the Act (MCLA §169.245), a candidate is clearly restricted as to possible expenditures from the campaign fund upon termination of the committee. A candidate must give excess funds to a political party committee, a tax exempt charity, or to the original contributors. However, the Act or rules are not clear as to expenditures permissible prior to termination, i.e., whether the candidate can make non-political expenditures.

Section 6 of the Act (MCLA §169.206) defines "expenditure" as anything of ascertainable monetary value transferred out for the purpose of influencing an election. Interestingly, the Federal system defines "expenditure" similarly.

The title of the Act states:

> "An ACT to regulate political activity; to regulate campaign financing; to restrict campaign contributions and expenditures; to require campaign statements and reports; to regulate anonymous contributions; to regulate campaign advertising and literature; to provide for segregated funds for political purposes; to provide for the use of public funds for political purposes; to create a state campaign fund; to provide for reversion of or refunding of, unexpended balances; to require reports; to provide appropriations; to prescribe penalties; and to repeal certain acts and parts of acts." (Emphasis supplied)

Section 21(3) of the ACT (MCLA §169.221) provides (in pertinent part):

> "Except as provided by law, a committee shall have 1 account in a financial institution in this state as an official depository for the purpose of depositing all contributions which it receives in the form of or which are converted to money, checks, or other negotiable instruments and for the purpose of making all expenditures."

Section 26(b) of the Act (MCLA §169.226) provides (in part):

> "A campaign statement of a committee shall contain the following information: Under the heading 'receipts', the total amount of contributions received during the period covered by the campaign statement; under the heading 'expenditures', the total amount of expenditures made during the period covered by the campaign statement, and the cumulative amount of those totals for that election."

These provisions of the Act reinforce the conclusion that campaign fund money must be used to influence a campaign. The title makes it clear that one of the purposes of the Act is to restrict expenditures. The language in the title indicates an "anything goes" policy with regard to spending is not contemplated statutorily. Section 21(3), which requires one account for deposit of all campaign monies to be used for making all expenditures,

and Section 26(b), which requires the reporting of all expenditures together constrict the use of campaign funds for purposes which influence elections. It is particularly noteworthy that while the Act requires the reporting of "receipts" such as interest paid by a bank for campaign funds on deposit, thereby acknowledging funds not given for the purpose of influencing elections, the Act requires only the reporting of "expenditures", i.e., monies used to influence an election, rather than "disbursements", a term which includes monies used for purposes other than influencing an election.

In order to give full meaning to all the statutory provisions concerning permissible use of campaign funds, it must be concluded a candidate must use campaign funds for the purpose of influencing an election.

Addressing your query as to whether campaign funds may be used for personal expenses of a candidate, it appears since a candidate must use campaign funds for political expenses, the fact an expenditure is also personal makes no difference so long as the expense may in good faith be interpreted as influencing an election. For example, if a candidate purchases a trip to Mexico and that trip in good faith is purchased for the purpose of influencing his or her election, e.g., to enhance the candidate's image as an individual familiar with Michigan's foreign trade policy, the expenditure is permissible.

The above interpretation concerning permissible use of campaign funds finds support in the statutes of other states. Illinois has a statute which reads very much like Michigan's law. Illinois Statutes §9-5 provides (in part):

> "In the event that a political committee dissolves, all contributions in its possession, after payment of the committee's outstanding liabilities, including staff salaries, shall be refunded to the contributors in amounts not exceeding their individual contributions, or transferred to other political or charitable organizations consistent with the positions of the committee or the candidates it represented. In no case shall these funds be used for the personal aggrandizement of any committee member or campaign worker."

According to the Illinois State Board of Elections, Division of Public Disclosure, the above statute is interpreted to mean that before, during and after an election, a candidate must spend campaign funds for the purpose of influencing an election; all other uses are prohibited. A candidate may make personal use of the funds only if the expenditure is also made to influence an election. Thus, a candidate could theoretically purchase satin sheets with campaign funds if the use of satin sheets served to influence the candidate's renomination or election. If a candidate can in good faith substantiate that an expenditure shall influence an election, the expenditure can also serve any other purpose including a personal purpose. However, an expenditure may not solely be a personal expenditure.

In California there are no limits as to how campaign funds may be used. The time before, during, or after an election makes no difference as to permissible uses. However, there is also no requirement, as in Michigan's statute, that excess funds be given to charity, a political party committee, or to the original contributors, upon dissolution of the committee.

Minnesota has no regulation or limitation on the use of private contributions received by candidates. Nonetheless, the Ethical Practices Board which regulates campaign finance has recommended in the 1977-78 Annual Report that the Minnesota law be amended so that unused or expended campaign funds be returned to the contributors, or donated to a political party committee or charitable organization.

In summary, a reading of Sections 6, 21, 26, and 45 of the Act, for the reasons enumerated above, leads to the conclusion that campaign funds must be used to influence an election. All of the expenditures which you have listed in your request, even though made for personal living expenses, were intended to influence an election. Consequently, all of the enumerated expenditures were proper and within the parameters of the Act.

In support of this opinion, it should be noted there is a bill presently before the Legislature which would restrict the expending of campaign funds solely for the purpose of influencing an election.

This response constitutes a declaratory ruling concerning the applicability of the Act to the facts enumerated in your request.

Sincerely,

Richard H. Austin
Secretary of State

RHA/PTF/smh

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

May 30, 1979

Mr. Ted W. Barker
1115 Abana Lane
Houston, Texas 77090

Dear Mr. Barker:

This is in response to your letter regarding your responsibilities under the Campaign Finance Act ("the Act"), P.A. 388 of 1976.

You state you were a Charter Revision Commissioner for the City of Roseville, Michigan. The term of office for this position expired in August, 1977. You were a resident of Roseville, Michigan, but have been residing in Houston, Texas, since May 28, 1977.

You indicate the Macomb County Clerk, in a letter dated December 15, 1977, asked you to file a statement of organization and to submit late filing fees for failure to file timely the statement. You state you had no knowledge of the Campaign Finance Act or any of its requirements until you received the Macomb County Clerk's letter on December 20, 1977.

You ask for a ruling as to your responsibilities under the Act.

The Act became effective on June 1, 1977. Since you were an officeholder on that date, you were subject to the Act's provisions, including the filing of a statement of organization by June 10, 1977, pursuant to Section 24 of the Act (MCLA §169.224).

Section 24 imposes a late filing fee of $10.00 for each day a person fails to file a statement of organization in violation of the Act. The penalty fees shall not exceed $300.00.

Section 82 (MCLA §169.282) provides that peanlty provisions of the Act, including late filing fees, are not applicable to an act or omission occurring before December 1, 1977. It further states a late filing fee is not due or payable for an act or omission occurring before May 16, 1978, provided the act or omission was corrected before May 16, 1978. Consequently, violations occurring prior to December 1, 1977, continue if not corrected before May 16, 1978. Late filing fees are applicable, commencing after December 1, 1977, to any violation which continued after that date.

Lack of knowledge as to the provisions of the Act does not relieve a person to whom the Act applies of its responsibilities. Consequently, the late filing fees imposed by the statute are applicable to an individual regardless of whether he or she received a notice for failing to file a required statement.

It is noteworthy that subsequent to the date of your letter, the definition of "candidate" was amended to exclude any incumbent officeholder who is constitutionally or legally barred from seeking reelection or who fails to file for reelection by the applicable filing deadline. However, the legislation may not be applied retroactively.

Therefore, you are subject to late filing fees as determined and assessed by the Macomb County Clerk. You should file the required statement of organization immediately.

Sincerely,

Richard H. Austin
Secretary of State

RHA/PTF/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

MAY 31 1979 2 PM

May 30, 1979

Honorable James. E. Defebaugh
Michigan House of Representatives
State Capitol Building
Lansing, Michigan 48901

Dear Representative Defebaugh:

This is in response to your inquiry concerning the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended.

Section 32 of the Act (MCLA §169.232) provides:

> "(1) A late contribution shall be reported by filing with the filing officer within 48 hours after its receipt: the full name, street address, occupation, employer, and principal place of business of the contributor. Filing of a report of late contributions may be any written means of communication and need not contain an original signature. A late contribution shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section. If a campaign statement has not been filed, a late contribution may be reported, if practicable, in the campaign statement and need not, therefore, be reported in a subsequent campaign statement.
> (2) As used in this section 'late contribution' means a contribution of $200.00 or more received after the closing date of the last campaign statement required to be filed before an election."

You state you received a contribution of $200.00 on election day before the election was over, i.e., the check was in the mail delivered at approximately 3:00 p.m. on election day. You point out correctly that the law gives 48 hours to report a late contribution. In the present case, the late contribution could not be reported until after the election.

In this context, you ask clarification of the phrase "before an election" as it is used in Section 32.

"Before an election" refers to the filing date of the pre-election campaign statement. It does not modify the date of the late contribution. The intent of Section 32 is the disclosure of any large contribution received after the closing date of the pre-election report in order that the voting public is informed prior to voting on election day. The 48 hour limit is intended to expedite the filing of the information for this purpose.

Accordingly, Section 32 is applicable only to contributions of $200.00 or more received after the closing date of the pre-election report and more than 48 hours before 12:01 a.m. of the date of the election.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

MAY 31 1979 2 PM

May 30, 1979

Honorable Michael O'Brien
Michigan State Senate
State Capitol
Lansing, Michigan 48909

Dear Senator O'Brien:

This is in response to your request for an interpretative statement regarding the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended.

Specifically, you inquire as to the types of investments that may be made with monies in an officeholder expense fund and candidate committee. You refer to such potential investment possibilities as savings certificates of deposit, common stocks, and commodities.

In a September 2, 1977 declaratory ruling addressed to Mr. John L. Damstra, Treasurer, Kent County Republican Committee, the Department issued various guidelines for investment of a campaign committee's funds in certificates of deposit or other interest bearing accounts. A copy of that declaratory ruling is enclosed.

In that letter, the Department stated:

> "Section 2(3) of the Act requires a committee to designate an account in a financial institution in this state as its official depository for the purpose of depositing all contributions which it receives and for the purposes of making all expenditures. The Act mandates that all contributions and expenditures pass through one account at the designated official depository.
>
> "However, the Act in Section 28(1) contemplates that a committee may receive interest on an account consisting of funds belonging to the committee. The mere transfer of funds deposited in the official depository to an interest bearing account for investment purposes is not an 'expenditure' as defined in Section 6 of the Act. Thus, the Act would not preclude a transfer from the official depository account to an interest bearing account in any financial institution if the committee retains complete control of the funds at all times and full disclosure is made." (Emphasis supplied)

A certificate of deposit is an interest bearing account with a fixed interest rate payable at a date certain. Consequently, funds in a certificate of deposit are always in complete control of the investor, notwithstanding that a substantial interest penalty might be assessed for early withdrawal of the invested monies.

On the other hand, investment in the stock market or commodities market would involve a purchase or sale of shares, not a mere transfer of controlled funds by an investor to an interest bearing account. An investor in the stock market, for example, conceivably could make a profit either by selling at a price higher than the purchase price or by receiving large dividends on the shares. Conversely, the investor could suffer a partial or total loss depending on the vagaries of the market.

While the purchase of assets might be sound from an investment standpoint, the Act requires that committees deposit funds in an account in a financial institution. The purchase of shares or of commodities cannot be construed to be such an account.

Accordingly, monies in the officeholder expense fund or in the candidate committee account may not be invested in the stock market or commodities market but may be invested as delineated in the Damstra ruling.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/smh
Enclosure

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

MAY 31 1979 2 PM

May 30, 1979

Honorable Leo R. Lalonde
Michigan House of Representatives
State Capitol Building
Lansing, Michigan 48901

Dear Representative LaLonde:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to a newspaper advertisement and brochure paid for by a candidate.

You state the following factual situation:

> "On January 10, 1979, I purchased a newspaper advertisement informing my constituents of my office address and telephone number. A copy of the ad is enclosed. The cost of placing this ad was approximately $220.00. In addition, I had a brochure printed, similar to the ad, at a cost of approximately $130.00."

In a telephone conversation with Department staff, you indicated you paid for the materials out of your personal funds. Your question to this office is whether you have to list on your next campaign statement the cost of the advertisement and the brochure as an inkind contribution from yourself to your committee.

Section 26 of the Act (MCLA §169.226) requires the reporting of all expenditures by a candidate committee. However, a disbursement from a candidate's personal funds only has to be reported in a campaign statement when the disbursement is campaign related, i.e., the disbursement qualifies as an "expenditure" under the Act.

Section 6(1) of the Act (MCLA §169.206(1)) defines an "expenditure" as a payment made in various forms for the purpose of influencing an election. The materials you have submitted merely inform your constituents where they may contact you, and of your interest in hearing from them concerning matters relating to state government. There is no mention of an election nor is there an appeal for the support of your constituents in any election.

The advertisement and brochure you submitted could have been purchased with funds from an officeholder expense fund established pursuant to Section 49 of the Act (MCLA §169.249). A fund of this type may be used for expenses incidental to

the person's office. The disbursements in the present case are clearly incidental to your office. Disbursements from an officeholder expense fund are not to be used for campaigning and are not reportable as campaign expenditures.

In conclusion, the disbursement of personal funds for office expenses is not prohibited by the Act and does not have to be reported by a candidate committee. Disbursements of this type may be made from an officeholder expense fund established pursuant to the Act.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN, SECRETARY OF STATE

STATE TREASURY BUILDING

May 30, 1979

Honorable George Montgomery
Michigan House of Representatives
State Capitol
Lansing, Michigan 48909

Dear Representative Montgomery:

You ask whether a corporation, which contributes to a ballot question committee, is subject to all reporting requirements of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended.

Section 54 of the Act (MCLA §169.254) prescribes the manner in which a corporation may make political contributions or expenditures. Section 54(3) permits a corporation to contribute up to $40,000.00 to a ballot question committee for the qualification, passage, or defeat of a particular ballot question.

Section 3(4) of the Act (MCLA §169.203(4)) defines "committee" as "a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question, if contributions received total $200.00 or more in a calendar year or expenditures made total $200.00 or more in a calendar year."

"Person" is defined in Section 11(1) (MCLA §169.211(1)) to include several entities among which is a corporation.

Section 2(2) (MCLA §169.202(2)) defines "ballot question committee" to mean "a committee acting in support of, or in opposition to, the qualification, passage, or defeat of a ballot question but which does not receive contributions or make expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate."

In view of the definitions stated in Sections 3(4) and 11(1), a corporation which makes a contribution or expenditure in the amount of $200.00 or more in a calendar year pursuant to the provisions of Section 54(3) is subject to all the registration and reporting requirements of the Act. The corporation has to register as a ballot question committee.

This letter is informational and does not constitute a declaratory ruling as your letter did not present a precise statement of facts. Moreover, since unofficial information contrary to the position expressed in this letter was provided previously by this office, the Department is applying this interpretation prospectively in enforcement of the Act.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/smh

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

MAY 31 1979 2 PM

LANSING

MICHIGAN 48918

May 30, 1979

Ms. Euella K. Thomas, Treasurer
East Detroit Millage Committee
15535 Evergreen Avenue
East Detroit, Michigan 48021

Dear Ms. Thomas:

This is in response to your inquiries concerning the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended.

You state the East Detroit Millage Committee wishes to transfer funds from a checking account to a savings account. As treasurer of the committee, your signature is the only one required for the checking account; you prefer that your signature be the only one required for withdrawal on the proposed savings account. You state you are the only active member of the committee. You raise the following questions:

1. If anything should happen to me what would the status of these accounts be?
2. Who would be authorized to withdraw from account(s) until a new treasurer was named?
3. Would it be possible to appoint a new treasurer immediately and proceed from there?

In a September 2, 1977, letter to Mr. John L. Damstra, Treasurer of the Kent County Republican Committee, the Department outlined the basic procedures for the transaction in question. A copy of this letter is enclosed for your information. You will note a transfer of monies may be effected within the parameters prescribed in the Damstra letter.

Concerning your specific questions, the first and second inquiries should be addressed to your bank or legal counsel. The questions are general legal questions which are outside the framework of the Act.

With respect to your third question, a new treasurer may be appointed immediately, if you are unable to perform the requisite duties. However, this question also should be discussed with legal counsel since appointment of a new treasurer may be difficult due to the fact you profess to be the only active member of the committee.

In closing, it is noted that in your letter you wish to report a new address. The proper method for reporting a new address is by amendment of your committee's original statement of organization. Amendment must be made on the appropriate form which may be obtained from your county clerk; a letter will not suffice.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp
Enclosure

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 21, 1979

Mr. Thomas J. Grzywacz
American-Polish Action Council, Inc.
14183 Wyoming Avenue
Detroit, Michigan 48238

Dear Mr. Grzywacz:

This is in response to your letter concerning the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended.

You state your organization, the American-Polish Action Council, Inc., is "requesting written permission from its members to have ninety per cent of all past and present dues and assessments transferred to its independent committee fund."

Although your letter does not state whether your organization is incorporated, your letterhead indicates the organization is incorporated. This response is premised on the assumption your organization is incorporated.

In addition, it is unclear as to which "independent committee fund" you desire to transfer the monies in question. It is assumed your letter refers to the "separate segregated fund" of the American-Polish Action Council, Inc.

Section 55(1) of the Act (MCLA § 169.255(1)) provides:

> "Sec.55 (1) A corporation or joint stock company formed under the laws of this or another state or foreign country may make an expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes. A fund established under this section shall be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, and independent committees.
>
> (2) Contributions for a fund established by a corporation or joint stock company under this section may be solicited from any of the following persons or their spouses:
>
> (a) Stockholders of the corporation.
> (b) Officers and directors of the corporation.
> (c) Employees of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(3) Contributions for a fund established under this section by a corporation which is nonprofit may be solicited from any of the following persons or their spouses:

(a) Members of the corporation who are individuals.
(b) Stockholders of members of the corporation.
(c) Officers or directors of members of the corporation.
(d) Employees of the members of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(4) Contributions shall not be obtained for a fund established under this section by use of coercion, physical force, or as a condition of employment or membership or by using or threatening to use job discrimination or financial reprisals.

(5) A person who knowingly violates this section is guilty of a felony and shall be punished by a fine of not more than $5,000.00 or imprisoned for not more than 3 years, or both, and if the person is other than an individual, the person shall be fined not more than $10,000.00."

As is evident from the above, only a nonprofit corporation may receive contributions from "members" of the corporation. Moreover, these "members" must be individuals or their spouses. The "members" may not be corporations.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:JV:tmr:mw

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 21, 1979

Mr. Robert M. Perry
Executive Vice President
Michigan Bankers Association
610 W. Ottawa
Lansing, Michigan 48933

Dear Mr. Perry:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act, ("the Act"), P.A. 388 of 1976, as amended, to the participation by bank officers or trade associations in the fund raising activities of elected officials.

You present a hypothetical situation involving a bank officer who is asked to participate in a candidate's reception/cocktail fund raising event. You state, "This will require that the officer communicate, probably by letter, to a group of selected individuals within his community."

As to the above situation you ask three questions:

(1) Are there restrictions under which the bank officer must operate in these circumstances if he or she acts in his or her official capacity as a corporate officer and utilizes corporate staff and resources?

(2) Is the answer to the first question different if the officer represents a trade association and utilizes the staff and resources of the association?

(3) Is the answer to the first question different if the officer personally performs all the services but does so on corporate time?

Section 54(1) of the Act (MCLA § 169.254(1)) provides a corporation may not make a contribution or expenditure or provide volunteer personal services for a candidate. Additionally, Section 54(2) (MCLA § 169.254(2)) provides that an officer, director, stockholder, attorney, agent, or any other person acting for a corporation, shall not make a contribution or expenditure or provide volunteer personal services.

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 21, 1979

Mr. Richard D. McLellan
McLellan, Schlaybaugh & Whitbeck
818 Michigan National Tower
Lansing, Michigan 48933

Dear Mr. McLellan:

This is in response to your request for a declaratory ruling concerning the applicability of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to corporate expenditures at a political party convention.

You present the following facts:

> "GPR Associates, Inc., is a corporation organized and existing under the provisions of the Michigan Business Corporation Act. It is not a corporation organized for political purposes.
>
> "GPR Associates, Inc. provides consultant services to government agencies, political parties, corporations and other organizations.
>
> "The Board of Directors of the corporation has authorized the officers of the corporation to participate in the State Convention of the Michigan Democratic Party. At this convention the delegates of the Michigan Democratic Party will elect a State Party Chairman. No candidates for elective office will be nominated at the Democratic Party Convention.
>
> "GPR Associates, Inc. proposes to spend funds of the corporation for expenses related to the Democratic Party Convention, including but not limited to hotel rooms, food and beverage, telephone travel.
>
> "The expenditures will be made for the purpose of influencing the decisions of the delegates to the convention with respect to the adoption of certain resolutions and the election of individuals to office in the Democratic Party."

As to the above facts, you ask two questions:

1. Does the Act prohibit the proposed expenditures?

2. If not prohibited, is the expenditure of funds for the purpose of influencing delegates to a Democratic Party Convention at which candidates for elective office will not be nominated exempt from the recordkeeping and reporting requirements of the Act?

Section 6 of the Act (MCLA § 169.206) defines "expenditure" as meaning anything of ascertainable monetary value given to influence an election. "Election" is defined in Section 5(1) (MCLA § 169.205(1) as "a primary, general, special, or millage election held in this state or a convention or caucus of a political party held in this state to nominate a candidate." "Candidate" is defined in Section 3(1) (MCLA § 169.203(1) as an individual holding or seeking an elective office. "Elective office" is defined as a public office filled by an election.

None of the offices at stake at this particular convention are public offices; moreover, none of the resolutions to be adopted are ballot questions since none will appear on a ballot at an election for public office. Section 2(1) (MCLA § 169.202(1) defines "ballot question" as a question which is submitted or which is intended to be submitted to a popular vote at an election whether or not it qualifies for the ballot.

Accordingly, the expenditures in question are not prohibited by the Act and also need not be reported or recorded as expenditures under the Act.

This response constitutes a declaratory ruling as to the applicability of the Act to the facts enumerated in your request.

Sincerely

Richard H. Austin
Secretary of State

RHA:dt:mw

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 21, 1979

Mr. Art Kelsey
4602 East Clinton Trail
Eaton Rapids, Michigan 48827

Dear Mr. Kelsey:

This is in response to your inquiry concerning the applicability of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to the use for campaign purposes of a demonstration vehicle provided previously for other purposes by a corporation.

You state "As the spouse of an auto dealer I am entitled to the full use of a 'demo' vehicle, per agreement with Ford Motor Company. I am presently using this vehicle for campaigning."

You ask whether use of this vehicle for campaigning is permissible under the Act.

Section 54(1) of the Act (MCLA §169.254(1)) provides a corporation may not make a contribution or expenditure to a candidate committee. The definitions of "contribution" in Section 4 (MCLA §169.204) and "expenditure" in Section 6 (MCLA §169.206) include the transfer of anything of ascertainable monetary value to an individual for the purpose of influencing the nomination or election of a candidate.

Although it may be stated the vehicle was not placed initially in your possession for the purpose of using it to campaign for office, its usage in a campaign by a candidate is a transfer of an object of ascertainable monetary value for the purpose of influencing an election. The use of corporate property by a candidate committee is prohibited by the Act.

Accordingly, you may use the demonstration vehicle for any purpose allowed in agreement with Ford Motor Company, but you may not use the vehicle for campaign purposes.

This response constitutes a declaratory ruling concerning the applicability of the Act to the facts enumerated in your request.

Sincerely,

Richard H. Austin
Secretary of State

RHA/PTF/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 21, 1979

Mr. Joseph W. Gelb
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10022

Dear Mr. Gelb:

This is in response to your inquiry concerning the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended.

Your letter makes three requests:

(1) A request for a declaratory ruling as to the applicability of the Michigan Insurance Code (specifically MCLA §500.2074) to a corporation which is affiliated with an insurance company, but is not itself engaged in the insurance business in Michigan or elsewhere.

(2) A request for interpretation as to whether a corporation, which establishes a separate segregated fund, may give contributors to the fund the option of "earmarking" their contributions (i.e., specifying the candidates to whom the fund must contribute) or contributing undesignated funds (i.e., authorizing the managers of the fund to select recipient-candidates).

(3) A request for an interpretation as to whether the Act permits a fund established and administered by a corporation to solicit the employees of the subsidiaries of the corporation, in addition to those employees of the corporation.

As to your first request, Section 15(1)(e) of the Act (MCLA §169.215(1)(e)) requires the Department to issue declaratory rulings to implement the Act pursuant to Act No. 306 of the Public Acts of 1969, as amended, being Section 24.201 to 24.315 of the Michigan Compiled Laws. Section 63 of the latter statute (MCLA §24.263) provides in relevant part, "On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency." (Emphasis added). The Michigan Insurance Code is not a statute administered by the Department; consequently, the Department has no authority to issue a declaratory ruling regarding your first request.

With respect to your second request concerning whether a corporation, which establishes a "separate segregated fund", may give contributors to the fund the option of "earmarking" their contributions, Section 44(1) of the Act (MCLA §169.244(1)) states a contribution shall not be made by a person to another person with the agreement or arrangement that the person receiving the contribution will then transfer that contribution to a particular candidate committee. Accordingly, "earmarking" contributions to a separate segregated fund is prohibited. Contributing undesignated funds (i.e., authorizing the managers of the fund to select recipient-candidates) is permissible under the Act.

As to your third request relative to whether the employees of subsidiaries of a corporation may be solicited for contributions to a fund, Section 55(2) (MCLA §169.255(2) states:

> "(2) Contributions for a fund established by a corporation or joint stock company under this section may be solicited from any of the following persons or their spouses:
>
> (a) Stockholders of the corporation.
>
> (b) Officers and directors of the corporation.
>
> (c) Employees of the corporation who have policy making, managerial, professional, supervisory, or administrative non-clerical responsibilities." (Emphasis added).

The statute limits solicitation to employees of the corporation. Accordingly, employees of subsidiaries of the corporation may not be solicited for contributions to the fund.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 21, 1979

Mr. Donald J. Reis
Williams, Damon & Reis
400 Frey Bldg.
Union Bank Plaza
Grand Rapids, Michigan 49503

Dear Mr. Reis:

This is in response to your inquiry concerning the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended.

You state "An individual contributed to the candidate committee of a candidate for State Representative the sum of $250 prior to the general election. This contribution was properly reported as required by the Statute. After the election, the candidate has outstanding bills related to his successful campaign. The contributor offers to make an additional contribution to help pay off the campaign debt."

The question presented is whether or not a candidate can receive an additional contribution from this individual after the election in order to retire the prior campaign debt.

Section 52(1) (c) of the Act (MCLA § 169.252 (1)(c)) provides a contributor may not contribute more than $250 for a candidate for state representative "with respect to a single election." Section 52(2) (MCLA § 169.252 (2)) states:

> "'With respect to a single election' means, in the case of a contribution designated in writing for a particular election, the election so designated. A contribution made after a primary election, general election, caucus, or convention and designated for the primary election, debts and obligations from the primary election, general election, caucus, or convention. If a contribution is not designated in writing for a particular election, the contribution shall be considered made for a primary election, general election, caucus, or convention if made on or before the date of the primary election, general election, caucus or convention.

From the facts presented, it may reasonably be assumed that the $250 contributed prior to the general election was not designated for any particular election.

Consequently, pursuant to the last sentence of the quoted statutory provision the $250 contributed prior to the general election is construed as a contribution for the general election. Therefore, the contributor may not contribute further to the general election or make any additional contribution to help pay off campaign debts attributed to that election.

However, if the contributor has not reached his or her contribution limit for the primary election and there are outstanding debts attributable to the primary election, the contributor may make a contribution designated in writing for the primary election only to the extent that the contribution does not exceed still outstanding debts and obligations from the primary election.

Since your request did not present a detailed statement of facts as required by Rule 169.6 of the Administrative Rules promulgated to implement the Act for the issuance of declaratory rulings, this response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:dt:mw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 21, 1979

Mr. John P. Dickey
Consumers Power Company
Attorney, Legal Department
212 West Michigan Avenue
Jackson, Michigan 49201

Dear Mr. Dickey:

This is in response to your request for an interpretation of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, as it relates to payment for the costs of a special election held to confirm a contract for services between a local community and Consumers Power Company.

You state that Consumers Power Company is a Michigan corporation, investor-owned public utility, providing electric and natural gas service to a large area of the lower peninsula of Michigan, as well as steam heat to one community. Your company serves a large portion of its customers under various local franchises, which are confirmed by vote of the people of the township, village, or municipality served.

Usually, approval is obtained at a special election called for that purpose. The costs incurred by the community in holding such a special election are reimbursed by your company as required by state law. You indicate,"Normally the only costs paid for by the company in such cases are the ballot printing, notice publication, poll workers, canvass of election results, and such other expenses as may be properly incurred by the local government directly in connection with the special election."

You state the company takes no action to influence voters in any way with request to the franchise proposed. The franchise is essentially a contract between the company and the community, granting the utility the right to serve the area in return for certain promises from the company.

After the election is held and exact costs are known, there is a settlement in which the company pays for any costs above the original estimate or the community refunds any monies it received above actual expenses of the election. This amount of reimbursement is a matter of public record within each community.

You ask whether the reimbursement of costs for holding the election should be reported pursuant to the Act?

In a letter dated March 29, 1978 to Ms. Cindy Sage of the Republican Women's Federation of Michigan, the Department stated:

> "The determination of whether the RWFM is subject to the Act's provisions is contingent on whether the state organization or any of the local organizations is a 'committee' as defined in the Act. Section 3 of the Act (MCLA § 169.203) defines a 'committee' as a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question, if contributions received total $200.00 or more in a calendar year or expenditures made total $200.00 or more in a calendar year. 'Person' is defined in the Act as including an association, committee, or any other organization or group of persons acting jointly."

In addition, Section 6(1) (MCLA § 169.206(1)) defines an expenditure as "anything of ascertainable value paid to influence an election."

Accordingly, notwithstanding that Section 5(1) (MCLA § 169.205(1)) defines an "election" as including a "special election" such as the election in question, your company is not expending monies to influence the results of the election. The costs being reimbursed represent the actual costs of the election pursuant to state law (see MCLA § 460.602 for townships and MCLA § 117.5) for cities. Therefore, no reporting pursuant to the Act is required of your company.

It should be stated, however, that should the company seek to influence the outcome of any franchise election, reporting would then be required by the Act.

This response constitutes a declaratory ruling concerning the applicability of the Act to the facts enumerated in your report.

Sincerely,

Richard H. Austin
Secretary of State

RHA:JV:tmr:mw

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 21, 1979

Mr. Michael Farrell, Chairman
Ingham County Democratic Party
Committee
Office of Senator William Faust
State Capitol
Lansing, Michigan

Dear Mr. Farrell:

This is in response to your inquiry regarding the applicability of the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended, to the cost of a mailed newsletter supporting candidates for the Lansing Community College Board of Trustees.

You state the Ingham County Democratic Party Committee may support candidates for the Lansing Community College Board of Trustees by sending a newsletter to eligible voters. You inquire as to how the cost of this newsletter must be reported.

The proper method for reporting the cost of the newsletter is contingent on the manner of formulation and distribution of the newsletter. If the newsletter is printed or distributed with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or committee of such candidate, the cost of printing and distribution is an in-kind contribution made by the Ingham County Democratic Committee and must be reported as an expenditure on the Committee's regular reporting statements. The candidate committees of the candidates for the Lansing Community College Board of Trustees must also report their receipt as an in-kind contribution on their individual reporting forms.

If the cost of printing or distribution is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or committee of such candidate, the printing and mailing is an independent expenditure by the Ingham County Democratic Party Committee and must be reported as an independent expenditure on the regular reporting statements. However, in this latter situation, the candidate committees of the Lansing Community College Board of Trustees have nothing to report.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MS-43 (8/77)

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN o SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

August 21, 1979

Mr. Thomas J. Grzywacz
American-Polish Action Council, Inc.
14183 Wyoming Avenue
Detroit, Michigan 48238

Dear Mr. Grzywacz:

This is in response to your letter concerning the Campaign Finance Act ("the Act"), P.A. 388 of 1976, as amended.

You state your organization, the American-Polish Action Council, Inc., is "requesting written permission from its members to have ninety per cent of all past and present dues and assessments transferred to its independent committee fund."

Although your letter does not state whether your organization is incorporated, your letterhead indicates the organization is incorporated. This response is premised on the assumption your organization is incorporated.

In addition, it is unclear as to which "independent committee fund" you desire to transfer the monies in question. It is assumed your letter refers to the "separate segregated fund" of the American-Polish Action Council, Inc.

Section 55(1) of the Act (MCLA § 169.255(1)) provides:

> "Sec.55 (1) A corporation or joint stock company formed under the laws of this or another state or foreign country may make an expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes. A fund established under this section shall be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, and independent committees.
>
> (2) Contributions for a fund established by a corporation or joint stock company under this section may be solicited from any of the following persons or their spouses:
>
> (a) Stockholders of the corporation.
> (b) Officers and directors of the corporation.
> (c) Employees of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(3) Contributions for a fund established under this section by a corporation which is nonprofit may be solicited from any of the following persons or their spouses:

(a) Members of the corporation who are individuals.
(b) Stockholders of members of the corporation.
(c) Officers or directors of members of the corporation.
(d) Employees of the members of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(4) Contributions shall not be obtained for a fund established under this section by use of coercion, physical force, or as a condition of employment or membership or by using or threatening to use job discrimination or financial reprisals.

(5) A person who knowingly violates this section is guilty of a felony and shall be punished by a fine of not more than $5,000.00 or imprisoned for not more than 3 years, or both, and if the person is other than an individual, the person shall be fined not more than $10,000.00."

As is evident from the above, only a nonprofit corporation may receive contributions from "members" of the corporation. Moreover, these "members" must be individuals or their spouses. The "members" may not be corporations.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF:JV:tmr:mw

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

December 14, 1979

Ms. Nancy H. Hazekamp
489 Gardner
Muskegon, Michigan 49443

Dear Ms. Hazekamp:

This is in response to your letter in which you raise the following questions concerning the Campaign Finance Act ("the Act"), 1976 P.A. 388, as amended.

(1) If an individual orders literature, signs, and brochures in order to run as a "write-in" candidate, does the person become a candidate on the date of the order or on the date of payment of the order?

Section 3(1)(c) of the Act (MCLA §169.203(1)(c)) provides a candidate is an individual who receives a contribution or makes an expenditure. Section 6(1) (MCLA §169.206(1)) defines "expenditure" to include a promise of payment. Consequently, in response to your first question, an individual becomes a candidate on the date he or she orders the campaign materials.

(2) Where does a candidate for township office obtain copies of campaign finance forms such as a statement of organization?

You may obtain all necessary forms and other information from your county clerk.

(3) In the event there are write-in candidates, may a voter request a ballot similar to the absentee ballot and vote on this ballot which would then be placed with the absentee ballots? Is there space on the absentee ballot for write-in candidates?

These latter questions are not within the purview of the Campaign Finance Act and they have been referred to the Elections Division of the Department for response.

This letter is informational only and does not consitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings and Legislation

PTF/smh

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

December 14, 1979

Mr. John P. Hancock, Jr.
1881 First National Building
Detroit, Michigan 48226

Dear Mr. Hancock:

This is in response to your request for a declaratory ruling pursuant to the Campaign Finance Act ("the Act"), 1976 P.A. 388, as amended, concerning the filing requirements of a person appointed to an elective office.

You state Andrew Frostic was appointed to an unexpired term on the Wyandotte School Board of Education in January, 1979. He later decided to seek election to a full term and filed a statement of organization on April 26, 1979. Mr. Frostic was assessed a late filing fee of $300.00 by the Wayne County Clerk because he had not filed a statement of organization by February 7, 1979, twenty days after appointment to the school board.

You ask if Mr. Frostic became a "candidate" under the Act upon appointment to the school board or upon deciding to seek election to the school board.

Section 3(1) of the Act (MCLA §169.203) defines "candidate" (in part):

> "'Candidate' means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made; or (d) who is an officeholder who is the subject of a recall vote. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for re-election to that same office for the purposes of this act only." (Emphasis added.)

Section 5(2) of the Act (MCLA §169.205) states (in part):

> " . . . A person who is appointed to fill a vacancy in a public office which is ordinarily elective holds an elective office . . ."

You argue that a person who holds an elective office is not an elected officeholder. Your argument is contrary to the plain meaning of the statute. Accepting your reading of the Act would make the above language of section 5(2) mere surplusage. You state the purpose of the language quoted from section 5(2) is "to prevent an appointed officeholder who decides to run for a full term from escaping the filing requirements of the Act. Such a person cannot claim that he is not a candidate for 'elective office' simply by virtue of his appointment thereto." However, section 5(2) is not needed to accomplish that goal as a person in that position would be a "candidate" upon "filing a fee, affidavit of incumbency, or nominating petition." The purpose of section 5(2) is to clarify that a person appointed to an elective office is to be treated as if he or she were elected to the office.

Mr. Frostic became a "candidate" upon his acceptance of the appointment to the school board. Within ten days of his acceptance, Mr. Frostic was required to form a candidate committee by section 21(1) of the Act and then had ten more days in which to file a statement of organization under section 24 of the Act. The Wayne County Clerk was correct in assessing Mr. Frostic $300.00 in late filing fees. The Act does not authorize either the county clerks or the Secretary of State to waive late filing fees.

This response constitutes a declaratory ruling concerning the applicability of the Act to the facts enumerated in your request.

Sincerely,

Richard H. Austin
Secretary of State

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

December 14, 1979

Mr. Lingg Brewer
Ingham County Clerk
Mason, Michigan 48854

Dear Mr. Brewer:

This is in response to your request for an interpretative statement concerning the Campaign Finance Act ("the Act"), 1976 P.A. 388, as amended.

You state the following facts:

> "I'm having a neighborhood party-volleyball game. The admission is free. The volleyball game is between old neighborhood friends and some Democratic candidates. In publicizing all aspects on the radio, a part of the ad has political overtones in that I mention the candidates by name, as well as my friends' names. My intent is to try to isolate the 'political' advertising value to each candidate and communicate to him the value of an 'in-kind' contribution."
>
> All expenses are being paid by me, as a private person. It would be difficult to say 'authorized by Jones, Miller, Smith, etc.,' on the ad. The disclaimer would be longer than the ad and the ad is only semi-political in nature."

You inquire as to the legal obligations imposed on you by the Act concerning this event.

There are three issues which must be addressed. First, it must be determined whether you may sponsor the event. Second, it must be determined what reporting must take place with respect to the function. Third, a determination must be made as to which of the Act's advertising requirements apply to the radio advertisement.

Section 44(2) of the Act (MCLA §169.244(2)) provides a candidate committee shall not make a contribution to or an independent expenditure in behalf of another candidate committee. However, the Department, in a letter to Mr. Peter Coughlin dated March 24, 1978, stated the Act does permit a candidate to use personal monies or assets as a contribution or independent expenditure in behalf of another candidate committee. Consequently, you may sponsor the event through the use of your personal funds.

Section 7(4) (MCLA §169.207(4)) states:

> "'Fund raising event' means an event such as a dinner, reception, testimonial, rally, auction, bingo, or similar affair through which contributions are solicited or received by purchase of a ticket, payment of an attendance fee, donations or chances for prizes, or through purchase of goods or services."

Although you indicate admission is free, it is not clear from the facts given whether contributions will be solicited or received through some other means, e.g., by donations or through purchase of goods, including refreshments. If contributions are not solicited or received, the function is not a fund raising event and need not be reported as such, although other reporting is required as indicated below. Even if contributions are received or solicited thereby qualifying the function as a fund raising event, it need not be reported by any candidate committee as a fund raising event if you alone sponsor the event with your personal funds and there is no financial involvement by any candidate committee.

The degree of involvement the various candidate committees have in sponsoring the event, if any, is not clear from your letter. If the committees have any part in sponsoring the event and the event receives or solicits contributions, the function must be reported as a joint fund raising event by the candidate committees involved, notwithstanding the fact you as an individual are paying all the expenses.

In the event the function constitutes a joint fund raising event, you are referred to a letter from the Department to Mr. Michael Hutson, dated September 20, 1978, a copy of which is enclosed. The criteria and guidelines for reporting a joint fund raising event are set forth in detail in the Hutson letter.

If the function qualifies as a fund raising event, the committees of participating candidates must report all contributions and in-kind contributions on a prorated basis, from each individual participant or attendee.

If the function does not qualify as a fund raising event, each candidate committee need only report as in-kind contributions, on a prorated basis, your individual expenses for the event including the cost of the radio advertisement.

Finally, with respect to advertising the event, section 47 of the Act (MCLA §169.247) provides that radio advertisements "having reference to a candidate" must include the name of the person paying for the advertisement. Accordingly, your name and the name of each candidate attending the event must be included in the advertisement. The fact that the advertisement is "difficult" or "semi-political" is immaterial.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

RICHARD H. AUSTIN • SECRETARY OF STATE

STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

December 14, 1979

Mr. Tat Parish
711 Pleasant Street
P. O. Box 409
St. Joseph, Michigan 49085

Dear Mr. Parish:

This is in response to your request for an interpretation of the Campaign Finance Act ("the Act"), 1976 P.A. 388, as amended, concerning maintenance of committee records.

You present your question as follows:

> "The question arises in connection with the County Committee of a political party. I was treasurer of the Berrien County Democratic Committee until January 1, 1979. As such, I had the records of the committee for the 1978 election. The committee is reelected every two years. Am I relieved of liability for the keeping of these records if they are turned over to the new treasurer? Or must I keep these records myself?"

The following provisions of the Act are relevant to your inquiry.

Section 22 of the Act (MCLA §169.222) states:

> "A committee treasurer shall keep detailed accounts, records, bills, and receipts as required to substantiate the information contained in a statement or report filed pursuant to this act or rules promulgated under this act. The treasurer shall record the name and address of a person from whom a contribution is received except for contributions of $20.00 or less received pursuant to section 41(3). The records of a committee shall be preserved for 5 years and shall be made available for inspection as authorized by the secretary of state. A person who knowingly violates this section is guilty of a misdemeanor and shall be punished by a fine of not more than $1,000.00, or imprisoned for not more than 90 days, or both."

Section 21(2) (MCLA §169.221(2)) provides (in part):

> "A committee shall have a treasurer who is a qualified elector of this state."

Section 21(4) (MCLA §169.221(4)) states (in part):

> "A contribution shall not be accepted and an expenditure shall not be made by a committee which does not have a treasurer."

A committee treasurer has the responsibility to retain the records for the requisite period of time. However, the committee bears the responsibility for ascertaining that the treasurer is performing his or her duties as prescribed in the statute. Consequently, in the instance where a change in treasurers occurs, the former treasurer, the new treasurer, and the committee principals collectively have the responsibility for assuring the proper transferral and maintenance of records from the previous treasurer to the successor treasurer.

In the event a committee dissolves, the last treasurer must retain committee records for the statutorily prescribed time. In dissolving, the committee must take appropriate steps for performance of this duty by the treasurer. In case a particular person cannot fulfill the responsibilities of treasurer, the committee, or principals of a dissolved committee, must provide for maintenance of the records as required by the Act.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

RICHARD H. AUSTIN ○ SECRETARY OF STATE
STATE TREASURY BUILDING
LANSING
MICHIGAN 489

December 28, 1979

Ms. Constance E. Cumbey
139 Cadillac Square
5th Floor
Detroit, Michigan 48226

Dear Ms. Cumbey:

This is in response to your request for a declaratory ruling by the Secretary of State with respect to the constitutionality of the Campaign Finance Act ("the Act"), 1976 P.A. 388, as amended (MCLA §169.201 et seq.).

Specifically, you point out that the title of the Act does not refer to officeholder expense funds and that the absence of such a reference renders the Act unconstitutional as it applies to officeholder expense funds. In addition you assert that it is "unfair and a deprivation of due process" to consider an officeholder to be a candidate for reelection because to do so would be contrary to the "usual and accepted" definition of the term "candidate."

You also contend that a contribution to "a newly inaugurated representative's deficit party operation cannot be construed as being with respect to a single election . . ."

The facts you supply are as follows:

> "Mrs. Terrell's inaugural committee was given a check in the sum of $1,000.00 from a Mr. Art Orleans, an Ohio developer, to be used for tickets for senior citizens to State Representative Terrell's inaugural events. Mrs. Terrell was elected for the first time to this office on November 9, 1978 and her constituency is heavily composed of low income black and senior citizen population. Public Act No. 388 of 1976 is entitled the 'Campaign Financing and Practices Act'. The title of the Act provides that this is '(A)n Act to regulate political activity; to regulate campaign financing; to restrict campaign contributions and expenditures; to require campaign statements and reports; to regulate anonymous contributions; to regulate campaign advertising and literature; to provide for segregated funds for political purposes; to provide for the use of public funds for political purposes; to create a state campaign fund; to provide for reversion of, or refunding of, unexpended balances; to require reports; to provide appropriations; to prescribe penalties; and to repeal certain acts and parts of acts.'"

Section 63 of the Administrative Procedures Act, (MCLA §24.263), 1969 P.A. 306, as amended, provides administrative agencies, including the Department of State, with the authority to issue declaratory rulings as follows:

> "On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure for its submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case."

Section 63 requires an agency to promulgate an administrative rule before it may issue a declaratory ruling. Such a rule was promulgated by the Secretary of State in 1977 in conjunction with other rules promulgated to implement the Act. (1977 AACS 169.1 to 169.56)

Section 63 of the Administrative Procedures Act limits the scope of a declaratory ruling to "a declaratory ruling as to the applicability to an actual state of facts of a statute administered by an agency . . ." The request submitted is not limited to applying facts to the statute but asks instead that the agency declare the statute unconstitutional. This request is clearly beyond the scope of the agency's authority to issue declaratory rulings. Therefore, the Department of State declines to declare the Act's provisions with respect to officeholder's expense funds to be unconstitutional.

In your letter you also assert that an officeholder is not violating the Act in retaining a contribution from an individual that is in excess of $250.00. You base this assertion on the rationale that contributions to an officeholder's "deficit party operation" cannot be construed as being with "respect to a single election . . ."

Section 52 of the Act (MCLA §169.252) establishes limitations on the amounts which may be contributed to candidates. An individual may contribute no more than $250.00 in value to a candidate for state representative "with respect to a single election." The phrase "with respect to a single election" is defined in Section 52(2) as follows:

> "For the purpose of subsection (1), 'with respect to a single election' means, in the case of a contribution designated in writing for a particular election, the election so designated. A contribution made after a primary election, general election, caucus, or convention and designated for the primary election, caucus, or convention shall be made only to the extent that the contribution does not exceed net outstanding debts and obligations from the primary election, general election, caucus, or convention. If a contribution is not designated in writing for a particular election, the contri-

You also contend that an incumbent officeholder is not a "candidate"; however, section 3 of the Act (MCLA §169.203) includes a definition of "candidate" which clearly encompasses an incumbent officeholder:

> ". . . Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only."

It is clear that for purposes of the Act Representative Terrell is a candidate. Without further legislative or judicial action with respect to these provisions, the Department is bound to enforce the Act's limitations on the amounts that individuals may contribute to candidate committees established by candidates for state elective office.

Prior to closing it should be noted that section 49 of the Act (MCLA §169.249), which provides for establishment of officeholder expense funds, imposes limits on donations to such funds.

This response is informational only and does not constitute a declaratory ruling.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp

MICHIGAN DEPARTMENT OF STATE

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STATE TREASURY BUILDING

LANSING
MICHIGAN 48918

December 28, 1979

Mrs. Sharon VanderKlok
3605 Stewart Drive
Kalamazoo, Michigan 49001

Dear Mrs. VanderKlok:

This is in response to your letter concerning the Campaign Finance Act ("the Act"), 1976 P.A. 388, as amended.

You indicate you were elected in 1979 to a four year term on the Kalamazoo School Board. You state your candidate committee has a reporting waiver and has filed its post election campaign statement. Your questions are answered in the order in which you raised them.

> 1) If the $500.00 limit is not exceeded at any time within the four year term of office, must the candidate committee file a campaign statement prior to filing the next post election campaign statement or dissolution statement?

A candidate committee does not have to file any campaign statement prior to filing the next post election campaign statement or dissolution statement, provided the $500.00 limit is not exceeded. However, if the committee receives or expends more than $500.00 in the time period between the closing date of the previously filed post election statement and June 20th of any year prior to completion of the term of office, an annual statement must be filed pursuant to section 35 of the Act (MCLA §169.235).

> 2) Must any checking account opened during a campaign be retained during the term of office and may it be used as an officeholder expense fund?

Section 3(1) of the Act (MCLA §169.203) provides (in part):

> "Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only."

Since an officeholder remains a "candidate" for purposes of the Act, he or she is required to have a committee. An account must be maintained in an official depository, provided a committee has funds, until the committee is dissolved. In the event a committee has no funds, a depository must be designated.

Section 49 (MCLA §169.249) precludes the candidate committee account from being used for officeholder expenses. A separate officeholder expense fund must be established for payment of officeholder expenses and monies may be transferred to it from the candidate committee account. However, monies may not be transferred from the officeholder account to the candidate committee account because the officeholder expense fund may not be used to further the nomination or election of the officeholder.

3) Must an elected official's letters and paper continue to bear the identification as to source of payment required by section 47 of the Act?

As indicated above, an elected official remains a "candidate" under the Act. Section 47(1) of the Act (MCLA §169.247) provides that any printed matter "having reference to . . . a candidate . . . shall bear upon it the name and address of the person paying for the matter." Materials pertaining to the official's election efforts must bear the requisite identification information. Materials relating to the official's conduct of governmental activities in an official capacity, however, do not have to bear the identification.

This response may be considered informational only and not as constituting a declaratory ruling or an interpretive statement.

Very truly yours,

Phillip T. Frangos

Phillip T. Frangos, Director
Office of Hearings & Legislation

PTF/jmp